REMARKS

Pending claims 15-21, 23, 24 and 26-30 are free of the prior art. However, the PTO has rejected the claims on the assertion that they fail to meet the "written description" requirement of 354 USC 112. Specifically, the USPTO focuses on the phrase, "CD40-binding polypeptide," and states that the basis for the rejection is that, while the application describes a "small number of molecules that bind to CD40 and activate lymphocytes," the application "fails to disclose any other suitable molecules." The inventions are fully described and Applicants respectfully traverse this rejection in its entirety.

In re Rasmussen, cited by the Examiner, stands for the proposition that original claims form a part of the disclosure for purposes of determining compliance with the written description requirement. That case has not been overruled, and no case may be cited as contrary to this black letter statement of the law. While the present application as filed plainly refers to the use of CD40 binding polypeptides, so do the original claims, which reference molecules that include receptor targeting domains (including CD40 targeting domains), as well as polypeptide receptor targeting domains (see, e.g., claims 8-14, which reference polypeptide-producing DNA expression vectors, including polypeptides having domains that bind to CD40). Thus, the claims satisfy the written description requirement, as a matter of law.

Applicants respectfully further submit that none of the other cited cases support the rejection. *Lockwood*, for example, dealt with interactive sales terminals where there was no specific language to support claims. Such is not the case here. *Lilly* related to a claim to human insulin DNA where the application lacked sequence information, which is also not pertinent to this application. Applicants further note that *Bell* and *Deuel* are 103 cases, and did not deal with written description. The sufficiency of disclosure in the prior art vis a vis a section 103 rejection is not an issue here.

Fujikawa (attempt to amend claims to refer to subgenus of cholesterol biosynthesis inhibition compounds) and *Wilder* (new claims to dictating machine added during reissue) dealt, respectively, with attempts to support fundamentally altered claims during prosecution and reissue. Here, no claim has been amended in such a manner. The current pending claims of the

instant case merely identify CD40 receptor polypeptide targeting domains, rather than "targeting domains" or "polypeptide targeting domains."

Additionally, and importantly, Applicants emphasize that none of the cited cases support the notion that the written description of an invention may be undone by reference to the number of compounds identified as falling within a genus of useful compounds as originally envisioned, and any such theory would be contrary to the law of written description. "Possession" of an invention -- which refers to mental not physical possession -- assessed in reference to a pending claim where the invention is defined using the terms of the originally filed specification, including one or more original claims, cannot be challenged.

With respect to claims 18, 19, 28, and 30, the Office Action indicates that there is adequate support for CD154 molecules capable of binding CD40 (see page 4, last paragraph of November 17, 2004 Office Action). Applicants agree. Further, amino acid sequences for such molecules comprising CD154 are provided in SEQ ID NO:20 to 27 and in Figures 2 and 3 of the instant application. The last paragraph of page 4 of the Office Action also states "However, said polypeptides bust not only be capable of binding CD40, but they also must facilitate the activation of lymphocytes after fusion protein binding." However, the instant claims do not require that the antigenic polypeptides facilitate activation of lymphocytes. This limitation cannot be read into the claims. Applicants respectfully request that the rejection of claims 18, 19, 28, and 30 be reconsidered and withdrawn.

Claim 27 has been objected to under 37 C.F.R. 1.75(c) as being of improper dependent form for allegedly failing to further limit the subject matter of a previous claim. Applicant traverses this objection. Claim 27 specifies "An Antigenic polypeptide of claim 15 that is produced in an animal". However, the antigenic polypeptide of claim 15 need not be produced in an animal. As just one example, it may be produced in a bacterial cell. Applicants request that the objection of claim 27 be reconsidered and withdrawn.

Applicants respectfully request that the rejection of claims 15-21, 23, 24 and 26-30 be reconsidered and withdrawn, and the case passed to allowance.

CONCLUSION

The pending claims are now in condition for allowance, and prompt notification of allowance is requested.

If the Examiner has any questions regarding this Response, he is encouraged to contact the undersigned.

Respectfully submitted,

By: _____

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